IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 17TH AUGUST 2007 / 26TH SRAVANA 1929

CRP.No. 2533 of 2002(H)

AA.87/1998 of A.A.(LAND REFORMS),TRIVANDRUM
OA.203/1982 of LAND TRIBUNAL, KOLLAM

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REVN. PETITIONER: L.RS.OF RESPONDENT-L.RS.OF CLAIMANT

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1. MADHAVIKUTTY, PADIPPURA VEEDU,
KOTTAPPURAM CHERRY, PARAVOOR, KOLLAM.

2. MEERA D/O. MADHAVIKUTTY, OF DO. DO.

3. ANIL KUMAR, S/O. MADHAVIKUTTY, OF DO. DO

4. SUNIL KUMAR,S/O. MADHAVIKUTTY, OF DO. DO

5. UNNIKRISHNAN, S/O. MADHAVIKUTTY, OF DO.
DO.

BY ADV. DR.K.P.SATHEESAN
SRI.K.K.GOPINATHAN NAIR

RESPONDENTS: APPELLANT/RESPONDENT

P.OMANA, KALEELIL VEEDU, KOONAYIL CHERRY
PARAVOOR, KOLLAM.

BY ADV. SRI.B.SURESH KUMAR
SMT.C.G.PREETHA
SMT.T.V.NEEMA

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 17/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.R.P.NO.2533/2002

ORDER ON I.A.NO.497 OF 2007 IN C.R.P.NO.2533/2002
DISMISSED

17.08.2007 SD/- M.N. KRISHNAN, JUDGE.

M.N. KRISHNAN, J.

C.R.P.NO. 2533 OF 2002

DATED THIS THE 17th DAY OF AUGUST, 2007

ORDER

This revision petition is preferred against the order of the Land Reforms Appellate Authority in A.A.No.87/98. The owner of the property is the first respondent (deceased) in A.A. and the legal heirs are the revision petitioners before the Court. The case is of the year 1982. Admittedly, the owner is having fifty cents of land and the kudikidappu is situated in the middle of the property. In the second tier of litigation, the Land Tribunal allowed the shifting of kudikidappu on the ground that the new land made available for shifting the kudikidappu is a suitable place and therefore, the kudikidappu has to be shifted to that place. But the Appellate Authority interfered with that order and found that shifting cannot be done to that place. But it can be done to the corner of his fifty cents and thereby the landlord can construct any new building if he wants, in the remaining place.

2. The Appellate Authority discussed the matter and found that the new proposed site is adjacent to a 'sarpa kavu'. The apprehension of the kudikidappukaran is that it is not safe to have a residential building near the 'sarpa kavu' for the reason that so many

observations are necessary and therefore he is afraid to shift to the new place. It is a real apprehension entertained by a poor kudikidappukaran of the property. Under Section 75(2) of the Kerala Land Reforms Act shifting of kudikidappu is permissible for constructing a building for residence of the landlord or the members of the family and shifting is permissible provided the landlord pays to the kudikidappukaran the price of the homestead and that new sites shall be fit for erecting a homestead and shall be within a distance of one mile from the existing kudikidappu. The fact that the land is situated within one mile from the existing kudikidappu is proved by the report of the authorized officers. Now the apprehension in the mind of the kudikidappukaran is that the proposed new site is not fit for constructing a kudikidappu because it is adjacent to a 'sarpa kavu', where the kudikidappukaran is afraid to construct homestead. These are all matters of faith and one cannot simply overthrow it and direct him to stay in that place. In this type of circumstances, it is the comparative hardship that may have to be looked into. The landlord is having fifty cents of property. If portion of ten cents is carved out from a corner portion of the property then the remaining property will be totally available for the landlord to construct his new house. In this case, the Appellate Authority has directed that the kudikidappu be shifted to a corner of the schedule property of fifty cents from the middle of the

property. It is also stated that while shifting is done, the landlord will ensure that the same extent is given with convenient pathway. So, 40 cents of land remaining with him is more than sufficient for constructing a house with all privacies attached to it under the present set up. The land to be given to the kudikidappukaran is ordered to be located in a corner. Therefore, the privacy of the landlord also will not be affected. Instead of forcing the kudikidappukaran to go to the place where he is afraid of constructing buildings, it is desirable that he is permitted to do it in the place, which is a corner of 50 cents of land, which will not cause much inconvenience to the landlord.

I feel that the Appellate Authority has decided the issue correctly and there is nothing to interfere with the decision rendered. Therefore, the Civil Revision Petition is dismissed.

M.N. KRISHNAN, JUDGE

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